

PT 01-23

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>EDEN RETIREMENT CENTER, INC.</b>	)		
	)	<b>A.H. Docket #</b>	<b>99-PT-0017</b>
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>96-60-164</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>14-2-15-26-02-202-165</b>
<b>THE DEPARTMENT OF REVENUE OF</b>	)		
<b>THE STATE OF ILLINOIS, THE VILLAGE</b>	)		
<b>OF GLEN CARBON, AND COMMUNITY</b>	)		
<b>UNIT SCHOOL DISTRICT NO. 7</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Edward T. McCarthy, attorney at law, appeared on behalf of Eden Retirement Center, Inc. Mr. Gary E. Peel, attorney at law, appeared on behalf of Intervenor, Village of Glen Carbon. Mr. Jack H. Humes, Jr. attorney at law, appeared on behalf of Intervenor, Edwardsville Community Unit School District No. 7.

Synopsis:

The hearing in this matter was held at the Department of Transportation Building, 1100 Eastport Plaza Drive, Collinsville, Illinois, on November 20, 2000, to determine whether or not five buildings containing 10 duplex living units located on Madison County Parcel Index No. 14-2-15-26-02-202-165 qualified for exemption from real estate taxation for the 1996-assessment year.

Mr. Dennis Ulrich, CPA, a principal at the accounting firm of Scheffel & Company, P. C. accountants for Eden Retirement Center, Inc. (hereinafter referred to as “Eden” or the “Applicant”) and Mr. Wesley Barber, executive director of Eden were present and testified on

behalf of Eden.

During 1996 the facilities operated by Eden included a 122 bed skilled care nursing home, an apartment building containing 78 independent living apartments, and 11 duplex single story buildings containing 22 independent living units each containing either one or two bedrooms. During 1996 Eden applied for exemption for five single story duplex buildings containing ten one or two bedroom independent living units located on Madison County Parcel Index No. 14-2-15-26-02-202-165. The five single story duplex buildings in issue are part of the 11 duplex buildings operated by Eden during 1996.

The issue in this matter is whether the five single story duplex buildings identified as Nos. 407, 408, 421, 412, and 413 located on Madison County Parcel Index No. 14-2-15-26-02-202-165 were used for charitable purposes during the 1996-assessment year.

It is determined that the five single story duplex buildings located on Madison County Parcel Index No. 14-2-15-26-02-202-165 identified as Nos. 407, 408, 421, 412, and 413 were not used for charitable purposes during the 1996-assessment year.

It is therefore recommended that the five single story duplex buildings identified as Nos. 407, 408, 421, 412, and 413 located on Madison County Parcel Index No. 14-2-15-26-02-202-165 remain on the tax rolls for the 1996-assessment year and be assessed to Eden, the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter was established by the admission in evidence of Department's Exhibit Nos. 1 through 6C.

2. Eden filed an Application for Property Tax Exemption to Board of Review with the Madison County Board of Review on December 9, 1996. The Madison County Board of Review determined that the 1996 assessment of the property included in the Application for Property Tax Exemption here in issue was \$151,460.00. On December 23, 1996, the Madison County Board of Review held a hearing concerning the request for exemption for this parcel as required by 35

**ILCS 200/16-70.** Both the Village of Glen Carbon (hereinafter referred to as the “Village”) and Edwardsville Community Unit School District No. 7 (hereinafter referred to as “School District”) filed petitions to intervene before the Board of Review. After the hearing the Board of Review forwarded its recommendation that the exemption be denied to the Department. (Dept. Ex. Nos. 2, 2Y, 2Z, 2AA)

3. On February 11, 1999, the Department issued its determination in this matter approving the exemption of this parcel for all of 1996 except for Unit 413, the land on which it stands, and the area used as yard which was determined to be exempt as of April 1, 1996. (Dept. Ex. No. 3)

4. On February 26, 1999, attorney Gary Peel filed a request for hearing on behalf of the Village. (Dept. Ex. No. 4)

5. The Village and the School District each filed a Petition to Intervene before the Department. The aforesaid Petitions to Intervene were noticed and heard at the Pre-Trial Conference in this matter. There being no objection, the Petitions to Intervene were allowed and the attorneys for the School District and the Village participated in the hearing in this matter. (Dept. Ex. No. 5)

6. Eden acquired the parcel here in issue pursuant to a warranty deed dated February 11, 1986. (Dept. Ex. No. 2A)

7. Eden was incorporated pursuant to the “General Not For Profit Corporation Act” of Illinois on November 30, 1976, for purposes which included the following:

This corporation shall be organized and operated exclusively for charitable purposes in providing housing, nursing and other related care for the aged, and in connection therewith, to buy, sell, lease, mortgage and in all manner deal with real or personal property. (Stip. Ex. No. 1)

8. Section 6 of the By-laws of Eden include the following:

In order to continue to provide such services to residents, the corporation shall be authorized, in maintaining reserves for the care of the residents, to provide a reserve especially for the care of those who may be unable to further care for themselves and to

make the payments due the corporation. It is the established policy of the corporation to continue to maintain such persons as residents. (Stip. Ex. No. 2)

9. Section 7 of the By-laws provides as follows:

All entrance fees, monthly maintenance charges, routine service charges, nursing care charges, and non-rated charges may be waived in full, reduce in part, or liability for payment postponed based upon the individual's inability to pay and the Association's financial circumstances. (Stip. Ex. No. 2)

10. Eden is exempt from Federal Income Tax pursuant to Section 501 (c)(3) of the Internal Revenue Code. (Dept. Ex. No. 2AC, Appl. Ex. No. 2)

11. During 1996 approximately 35% of the residents in Eden's nursing home were on Illinois Public Aid (hereinafter referred to as "IPA"). During 1996 the average cost of providing care to Eden's nursing home residents was \$82.63 per day. The IPA reimbursement rate during that year was \$68.06 per day. During 1996 Eden was spending on average \$14.57 more per day on nursing home IPA residents than it was receiving. (Tr. p. 17)

12. During 1996 persons intending to reside in the apartments or duplex homes of Eden had the option of choosing either a Resident Agreement or a Rental Contract. (Tr. p. 57)

13. During November 2000 the residents of the duplexes here in issue all had lived in their unit since 1996 or before. These residents had paid up front entrance fees ranging from \$65,000.00 to \$76,900.00. (Appl. Ex. No. 6)

14. The list of residents of the duplexes during November 2000 included residents of all of the duplexes here in issue except No. 413. Of those eight units the residents of seven of those units had signed resident contracts with entrance fees. The residents of the eighth unit had signed a rental contract. That rental contract included a \$5000.00 security deposit. (Appl. Ex. No. 6)

15. Paragraph ten of the Resident Agreement provides that if a resident fails to make any of the payments required and fails to do so for a period of ninety days then the board of directors may in its discretion cancel the agreement. Paragraph ten goes on to provide that once a resident

has been accepted the resident may not be terminated solely for inability to pay. Eden may either allow the delinquent charges to accrue as credits to the remaining returnable balance of the entrance payment or may even waive the payments if such can be done without endangering the financial structure of the organization. (Appl. Ex. 4)

16. Paragraph five of the Rental Contract provides for a security deposit to be paid on the execution of the Rental Agreement. Paragraph three of the Rental Contract provides that if rent is not paid within 10 days after the due date then the resident shall pay 10% of the rent then due and owing as a late payment penalty. In addition all rent due and owing shall accrue interest at the rate of 1½% per month. Pursuant to Paragraph sixteen of the Rental Agreement failure to pay rent when due shall constitute a default. Upon default Eden's remedies include among others the right to terminate the Rental Agreement, take possession of the unit, and distrain for rent due. Paragraph twenty-five of the Rental Agreement is a confession of judgement pursuant to which Eden may seek possession of the unit and a judgement for rent due from the resident at the resident's expense. (Appl. Ex. No. 5)

17. Both the Resident Agreement and the Rental Contract require the prospective resident to provide Eden with a detailed financial report as a part of the resident's application. (Appl. Ex. No. 7)

18. During 1996 a husband and wife who occupied one of Eden's duplex units pursuant to a Residential Agreement determined that because of high medical expenses they were having trouble paying the monthly maintenance fee. Their duplex was not one of the duplex units here in issue. The husband went to the management of Eden to see if their maintenance fee could be reduced. It was agreed that in 1996 the maintenance fee would be reduced \$80.00 per month. In 1997 due to hardship their maintenance fee was reduced an additional \$50.00 per month. In 1998 they were able to pay the full monthly maintenance fee. In 1999 they again requested a \$70.00 per month reduction in the maintenance fee which was granted. At first Eden reimbursed itself for this maintenance fee reduction out of the refundable portion of the entrance fee. The

refundable portion of the entrance fee has been exhausted so that Eden is now bearing the burden of the reduction of this maintenance fee. (Tr. pp. 44-46)

19. The one circumstance concerning reduction of a maintenance fee recited above is the only one which has occurred in the last fifteen years among the 78 independent living apartment units and the 22 independent living duplex units operated by Eden. (Tr. pp. 61 & 62)

20. While Eden has allowed prospective residents to delay the payment of the entrance fee, Eden has never allowed the entrance fee to be waived or reduced. (Tr. pp. 60 & 61)

21. Eden's witness testified that no resident had been evicted from the apartments or the duplexes because of inability to pay. (Tr. pp. 56 & 57)

22. During calendar 1996 Eden's nursing home income was \$3,464,277.00 while independent living income was \$989,610.00. During 1996 Eden received charitable contributions of \$12,552.00. (Appl. Ex. No. 2)

23. I take Administrative Notice of Docket Nos. 89-60-158 and 89-60-160 in which the Department on December 22, 1989, exempted the 122 bed skilled care nursing home operated by Eden.

24. I also take Administrative Notice of Docket No. 89-60-161 in which the Department on December 22, 1989, exempted the 78-apartment retirement center.

25. I take Administrative Notice of Docket No. 89-60-159 in which the Department on December 22, 1989, exempted 6 duplex buildings containing 12 residential units. These 6 duplex buildings were identified as units 401 through 406. (Tr. p. 49)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. (Emphasis supplied)

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning charitable organizations, The Property Tax Code, found at 35 **ILCS** 200/15-65 exempts certain property from taxation in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity;
- (b) Beneficent and charitable organizations incorporated in any state of the United States. . . .
- (c) Old people's homes, . . . if, upon making application for the exemption, the applicant provides affirmative evidence that the home . . . is an exempt organization under paragraph (3) of Section 501 (c) of the Internal Revenue Code or its successor, and either:
  - (i) the bylaws of the home . . . provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets or fee for services, . . . . (Emphasis supplied)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). From the foregoing cases it is

clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to the exemption.

The first three lines of Section 200/15-65 repeats the Constitutional requirement of Article IX Section 6 concerning property being exclusively used for charitable purposes. Section 200/15-65 then goes on to set forth additional requirements for exemption. From the plain language of the Constitution and Section 200/15-65 it is clear that to qualify for a charitable exemption, property must first be actually used for charitable purposes.

To qualify for an exemption from taxation as a charity, the Courts have determined that an applicant must demonstrate not only that property is used for charitable purposes but also that it is owned by a charitable organization. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4<sup>th</sup> Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes.

Eden is an Illinois not-for-profit corporation, consequently it has no capital, capital stock, or shareholders.

During 1996 Eden's funds were derived primarily from nursing home fees, independent living apartment and duplex rent, and not charitable contributions.

Concerning the criteria of whether the benefits derived are for an indefinite number of persons, charity is dispensed to all who need and apply for it, and no obstacles are place in the way of those seeking the benefits in regard to these units, there is the matter of the substantial



entrance fees. Most certainly the benefits derived are only for persons who can pay the substantial entrance fees. While Eden's bylaws provide that the entrance fees may be waived or reduced, in the last 15 years this simply has not happened. The best a prospective resident in the duplexes can hope for is a short delay before being required to pay the entrance fee. Regarding the monthly maintenance fee, the testimony indicates that in the last 15 years out of a total of 100 independent living units, there has been one case where there was a reduction of the maintenance fee. During the first couple of years of that reduction, Eden was able to pay itself out of the reimbursable portion of the Residents' entrance fee. Clearly the entrance fee is an obstacle placed in the way of those seeking the benefits of Eden's independent living units. In addition the entrance fee provides Eden with a method of reimbursing itself if it is required to reduce the maintenance fee.

The witnesses for Eden testified that the prospective residents of the duplexes had the option of either executing the Resident Agreement, which required an entrance fee, or a Rental Contract. The Rental Contract requires a security deposit, which is set in the amount of several months rent. The Rental Contract also includes a late payment penalty, provides for interest on late payments, and also provides for eviction on failure to pay rent. The Rental Contract cannot under any circumstances be considered as promoting the charitable use of the independent living units subject to that agreement.

In 1996, all prospective residents of the duplexes were required to complete a very detailed financial statement, which along with either the entrance fee or the form of the Rental Contract constituted obstacles placed in the way of those seeking the benefits.

I therefore conclude that the five duplex units of Eden here in issue met only one of the six guidelines set forth in the Methodist Old Peoples Home case. Consequently these duplex units were not primarily used for charitable purposes.

It should also be pointed out that the Illinois Courts have repeatedly held that where organizations attempt to collect entrance fees, founders fees or prepaid rent for independent living units, the units involved were determined to not have been used for primarily charitable

purposes. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968); Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4<sup>th</sup> Dist. 1987); and Good Samaritan Home v. Department of Revenue, 130 Ill.App.3d 1036 (4<sup>th</sup> Dist. 1985).

The testimony of Eden's witness that no resident had been evicted from the apartments or duplexes because of inability to pay attests not to the charitable use of those facilities but rather to the effective use of the financial information provided on the application, the entrance fees, and the security deposits. In fact, concerning the 100 independent living units operated by Eden, in only one case during the last fifteen years did Eden actually partially reduce the maintenance fee.

Eden is exempt from Federal income tax pursuant to Internal Revenue Code Section 501(c)(3). Illinois Courts have held that exemption from Federal income tax and from State sales and use tax is not determinative of whether a property is used for charitable purposes. In re Application of Clark v. Marian Park, Inc., 80 Ill.App.3d 1010 (2<sup>nd</sup> Dist. 1980) and People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

During 1989 the Department exempted the 122-bed skilled care nursing home, the 78-apartment retirement center, and six of the duplex independent living units. The exemption statute in force at that time was the Revenue Act of 1939. The relevant provision of that statute was found at 1989 Ill. Rev. Stat., Ch. 120, Para. 500.7, which exempted property for charitable purposes as follows:

All old people's homes or homes for the aged . . . shall qualify for the exemption stated herein, if upon making application for such exemption, the applicant provides affirmative evidence that such home . . . is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor, and either: (i) the bylaws of the home . . . provide for a waiver of reduction of any entrance fee, assignment of assets or fee for services, based upon the individual's ability to pay, . . . (Emphasis supplied)

Pursuant to the plain language of the foregoing provision of the Revenue Act of 1939 the Department granted the exemptions requested by Eden during 1989 including the one requested

in Docket No. 89-60-159 which concerned 6 duplex buildings containing 12 residential units. This provision of the Revenue Act of 1939 and the Department's interpretation thereof fails to take into account the provision of the Constitution of 1970 which requires that to qualify for exemption property must be exclusively (primarily) used for charitable purposes. The current provision of the Property Tax Code found at 35 **ILCS** 200/15-65 does include the Constitutional requirement and makes the remainder of the provisions subject to it. While Eden has a 501 (c)(3) exemption and the required language concerning waiver or reduction of fees in its bylaws, the evidence shows that it simply does not use the parcel and the independent living duplexes here in issue primarily for charitable purposes.

I therefore recommend that the five single story duplex building located on Madison County parcel Index No. 14-2-15-26-02-202-165 identified as Nos. 407, 408, 421, 412, and 413 remain on the tax rolls for the 1996-assessment year and be assessed to Eden, the owner thereof.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
March 22, 2001